



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 09 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Gray
J. Topy and Sons
464 North Highland Ave
Columbus, Ohio 43204

Re: J. Topy and Sons, Inc., Columbus, Ohio

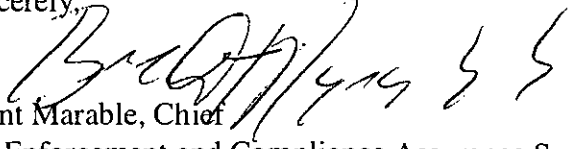
Dear Mr. Gray,

Enclosed is the Administrative Consent Order (ACO) entered into by J. Topy and Sons, Inc. (J. Topy) and the United States Environmental Protection Agency. Please retain this copy for your records.

The terms of this Order became effective on the date of signature by the Director, and are binding for two years from the effective date. Failure to comply with this Order may subject J. Topy to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

Should you have any questions, please contact Mr. Erik Olson, Associate Regional Counsel, at (312) 886-6829, or Ms. Natalie Topinka, of my staff, at (312) 886-3853.

Sincerely,


Brent Marable, Chief

Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosures: ACO

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-11-113(a)-OH-12
)	Proceeding Under Sections
J. Topy and Sons, Inc.)	113(a)(3) and 114(a)(1)
)	of the Clean Air Act,
)	42 U.S.C. §§ 7413(a)(3) and 7414(a)(1)
Columbus, OH)	
)	
)	
)	
)	

Administrative Consent Order

1. The Director of the Air and Radiation Division (Director), U.S. Environmental Protection Agency, Region 5 (EPA), is entering into this Administrative Consent Order (Order) with J. Topy and Sons, Inc. (J. Topy), 464 North Highland Ave, Columbus, Ohio, under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3), 7414(a)(1).

I. Statutory and Regulatory Background

2. Section 113(a)(3)(B) of the Act, 42 U.S.C. § 7413(a)(3)(B), authorizes the Administrator of EPA to issue an order requiring compliance with Subchapter VI of the Act to any person who has violated or is violating any requirement of Subchapter VI. The Administrator of EPA has delegated her order authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region 5, has delegated her order authority to the Director pursuant to EPA Region 5 Delegation 7-6-A.

3. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The Administrator of EPA has delegated her information gathering authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region 5, has delegated her information gathering authority to the Director pursuant to EPA Region 5 Delegation 7-8.

4. Subchapter VI of the Act, 42 U.S.C. § 7671, *et seq.* provides for the protection of stratospheric ozone. Section 608(b) of the Act, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of class I and II substances. Class I and II substances include refrigerants containing chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). EPA promulgated such regulations covering the safe disposal of CFCs and HCFCs from small appliances and motor vehicle air conditioners at 58 Fed. Reg. 28660 (May 14, 1993). These regulations for protection of the stratospheric ozone, recycling and emissions reduction are found in 40 C.F.R. Part 82, Subpart F.

5. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances and motor vehicle air conditioners (MVACs) must either recover the refrigerant in accordance with specific procedures or verify with signed statements that the refrigerant was properly recovered prior to receipt of the small appliance or MVAC. See 40 C.F.R. § 82.156(f). If verification statements are used then the scrap recycler must notify the suppliers of the small appliance or MVAC of the need to properly recover the refrigerant. See 40 C.F.R.

§ 82.156(f)(3). The scrap recycler must keep verification statements on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

6. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define a "small appliance" as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under the counter ice makers, vending machines, and drinking water coolers. See 40 C.F.R. § 82.152.

7. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define motor vehicle air conditioners (MVACs) as mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. See 40 C.F.R. §§ 82.32 and 82.152.

II. Findings

8. J. Topy owns and operates a scrap metal recycling facility at 464 North Highland Ave, Columbus, Ohio. J. Topy is a corporation organized and doing business in Ohio. J. Topy is a person as defined by 40 C.F.R. § 82.152.

9. J. Topy is a person who takes the final step in the disposal process of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

10. J. Topy has accepted small appliances and MVACs without recovering refrigerant. J. Topy has not obtained verification statements that met the requirements of 40 C.F.R. § 82.156(f) for these small appliances and MVACs.

11. J. Topy has violated 40 C.F.R. § 82.156(f) because it did not recover refrigerant from small appliances and MVACs and did not obtain proper verification statements.

12. J. Topy has had an opportunity to confer with EPA concerning the violations referenced in paragraph 11.

III. Compliance Program

13. J. Topy must comply with 40 C.F.R. Part 82. Additionally, J. Topy must take the following actions by the dates specified and maintain compliance with paragraphs 14 through 19, below, for two years after the effective date of this Order for any small appliance or MVAC that it receives at its facility.

14. By September 30, 2011, J. Topy must no longer accept small appliances or MVACs with cut or dismantled refrigerant lines unless its supplier can provide the certification identified in paragraph 15 below.

15. By September 30, 2011, J. Topy must notify its suppliers in writing that it will not accept small appliances or MVACs with cut or dismantled refrigerant lines unless the suppliers can certify that the refrigerant was properly evacuated prior to cutting or dismantling the refrigerant lines. J. Topy will have its suppliers use the verification statement included as Attachment 1 to this Order if they claim that refrigerant was previously evacuated.

16. By September 30, 2011, J. Topy must notify its suppliers in writing that it will provide refrigerant recovery services at no additional cost or reduction in the value of the scrap. J. Topy may satisfy the notice requirements of paragraphs 15 and 16 with a

sign that is prominently displayed at its weigh station during the period of time that this Order is effective.

17. By September 30, 2011, J. Topy must purchase and use equipment to recover refrigerant from small appliances and MVACs.

18. J. Topy must have the refrigerant recovered by a properly trained individual. If that individual is an employee of J. Topy, then J. Topy will ensure that the individual is properly trained to use the equipment identified in paragraph 17.

19. By September 30, 2011, J. Topy must use the small appliance log included as Attachment 2. J. Topy will retain copies of receipts for all refrigerant it collects and sends to another company for reclamation. J. Topy will also document the number of small appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

20. By October 31, 2011, J. Topy must provide EPA with proof of its compliance with the notice requirements of paragraphs 15 and 16. By October 31, 2011, J. Topy must also provide EPA with proof that it purchased the equipment required by paragraph 17 and has an individual trained in recovering refrigerant as required by paragraph 18.

20. By March 31, 2012, September 30, 2012, March 31, 2013, and September 30, 2013, J. Topy must submit to EPA a copy of its small appliance log, the information required by paragraph 19 and any verification statements used pursuant to paragraph 15 above.

21. J. Topy must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch

EPA, Region 5
77 West Jackson
Chicago, Illinois 60604

IV. General Provisions

22. J. Topy agrees to the terms of this Order.
23. J. Topy will not contest the authority of EPA and it to enter into this agreement. J. Topy waives any further opportunity to confer or have a hearing.
24. This Order does not affect J. Topy's responsibility to comply with other federal, state, and local laws.
25. This Order does not restrict EPA's authority to enforce any requirement of the Act or its implementing regulations.
26. Failure to comply with this Order may subject J. Topy to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.
27. J. Topy may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If J. Topy fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.
28. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific

individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response(s) to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

29. The terms of this Order are binding on J. Topy, its assignees, and successors. J. Topy must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA that it has given the notice.

30. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

31. This Order is effective on the date of signature by the Director. This Order will terminate two years from the effective date, provided that J. Topy has complied with all terms of the Order throughout its duration.

32. Each person signing this Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

33. Each party agrees to pay its own costs and attorneys' fees in this action.

34. This Order constitutes the entire agreement between the parties.

AGREED AS STATED ABOVE:

J. TOPY AND SONS, INC.

By: Mark Gray

Date: 7-29-11

Name: MARK GRAY

Title: Manager

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

8/8/11
Date

Cheryl L. Newton
Cheryl L. Newton
Director
Air and Radiation Division



J. TOPY & SONS
REFRIGERANT EVACUATION CERTIFICATION

Under penalty of law, the undersigned SELLER hereby certifies to J. Topy & Sons (hereinafter "Buyer") that the appliance formerly containing refrigerant sold to BUYER on the date set forth below hereby comports to the legal requirements as denoted below. Seller also agrees to hold the BUYER harmless from any and all liability, including fines and attorney fees, arising from the improper evacuation and disposal of refrigerant. The SELLER specifically certifies compliance as follows:

Mandated Environmental Compliance. Pursuant to 40 CFR, Subpart F, federal and state regulations, undersigned SELLER certifies that all refrigerant (including, but not limited to, chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs), as defined in Section 608 of the Clean Air Act Amendments and 40 CFR Part 82), that has not leaked previously, has been recovered from appliances delivered under this contract of sale prior to delivery.

That the refrigerant was removed and recovered on (date of removal) _____
by (name of technician) _____, whose address is
_____ using USEPA-certified equipment.

The term "appliance" means "any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerated chiller, or freezer." An "appliance" includes both whole devices/machines/appliances and any portion of the refrigerant circuitry. The appliance(s) which is the subject of this sale is:

Descriptions:

Type of unit: _____	Manufacturer: _____
Type of unit: _____	Manufacturer: _____
Type of unit: _____	Manufacturer: _____

WARNING: By signing this form, you as the SELLER affirm that the information required under Code of Federal Regulations Chapter 40 Part 82 is true. If you provide false or incomplete information, you may be subject to felony and/or misdemeanor criminal charges, including the crime of Falsification pursuant to the Ohio Revised Code 2921.13.

SELLER:

Date: _____

Transaction Record No.: _____

Note: If the BUYER knows or has reason to know this signed statement is false it is a violation of law for the SELLER and the BUYER. Moreover, it is a violation of the Administrative Consent Order.

Refrigerant Recovery Log

[illegible]

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent Administrative Consent Order EPA-5-11-

113(a)-OH-12 by Certified Mail, Return Receipt Requested, to:

Mark Gray
J. Topy and Sons, Inc.
464 North Highland Ave
Columbus, Ohio 43204


I also certify that I sent a copy of the Administrative Consent Order EPA-5-11-

113(a)-OH-12 by First-Class Mail to:

Adam Ward
APC Manager
Central District Office
50 West Town Street, Suite 700
Columbus, Ohio 43215

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center - P.O. Box 1049
Columbus, Ohio 43216-1049

on the 9th day of August 2011.


Betty Williams
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7672 7563